Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Argument	4
I. Petitioner's point I entitled by him, "constitutionality of the Estero Act"	4
II. Petitioner's point II entitled by him, "voting rights of petitioner"	6
A. Introduction	6
B. The Estero Act	7
C. The "one man, one vote" issue is not present	10
D. The Estero Act does not violate the "one man, one vote" doctrine	11
III. Petitioner's point III entitled by him, "right of petitioner that the land developer account to the Estero district"	17
Conclusion	18

Table of Authorities Cited

Cases

	Page
Avery v Midland County (1968) 390 US 474, 20 LEd2 45	6, 12
Cipriano v City of Houma (1969) ..... US ....., 37 LW 4598	12, 13, 15, 16
Cooper v Estero Municipal Improvement Dist. (SF 22619) 70 AC 687	4
Cooper v Leslie Salt (SF 22616), Cooper v T. Jack Foster (SF 22617) (1969) 70 AC 669	3
Dusch v Davis (1967) 387 US 112, 116 18 LEd2 656, 659	11, 16

Pages

Kramer v Union School District (1969) ..... US ....., 37 LW 4530 ..... 12, 13, 15, 16

Murdock v City of Memphis, 87 US 590, 22 LEd 429 .... 5, 18

Reynolds v Sims (1964) 377 US 533, 12 LEd2 506 6

Yakus v United States (1944) 321 US 414, 88 LEd 834 .. 6, 18

Statutes

Drainage District Act of 1903 (stats 1903, ch 238, 291, as amended stats 1941, ch 335, 1575) 14

The Estero Act (stats 1960, 1st ex sess 1960, ch 82, 459) 3, 7, 8, 9, 10, 15

Amendment to Estero Act (stats 1967, ch 1511, 2695 §§3, 5) 3, 10

Protection Dist. Act of 1880 (stats 1880, ch 63, 55, §3, as amended stats 1889, ch 250, 366; stats 1929, ch 587, 990; stats 1957, ch 406, 1256; stats 1966, 1st ex sess ch 16, §27) 14

Protection District Act of 1907 (stats 1907, ch 25, 16) .. 14

Sacramento River West Side Levee District (stats 1915 ch 361, 520, §3, as amended stats 1917, ch 673, 1212) 15

23 USC §1254 ..... 2, 5

Codes

California Civil Code §2235 17

California Code of Civil Procedure §803 4

Water Code:

§35003 14

§35423 14

§35424 14

§35625 14

§50016 14

Constitutions

California Constitution Art XI §11 9

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 1412

WALTER S. COOPER, *Plaintiff and Appellant,* vs. LESLIE SALT COMPANY, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,616
WALTER S. COOPER, *Plaintiff and Appellant,* vs. T. JACK FOSTER, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,617
WALTER S. COOPER, *Plaintiff and Appellant,* vs. ESTERO MUNICIPAL IMPROVEMENT DISTRICT, et al., *Defendants and Appellants,* T. JACK FOSTER, et al., *Interveners and Respondents.*	California Supreme Court S.F. No. 22,619

BRIEF OF RESPONDENTS

T. Jack Foster; T. Jack Foster & Sons; T. Jack Foster, Jr.; T. R. Foster; Richard H. Foster; Foster D. Corp.; Foster T. Corp.; Foster J. Corp.; Foster B. Corp.; Midwest Dredging Corp.; Likins-Foster Honolulu Corp.; Lomita Homes Inc.; George A. McQueen

IN OPPOSITION TO

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

The Brief of Respondents T. JACK FOSTER; T. JACK FOSTER & SONS; T. JACK FOSTER, JR.; T.

R. FOSTER; RICHARD H. FOSTER; FOSTER D. CORP.; FOSTER T. CORP.; FOSTER J. CORP.; FOSTER B. CORP.; MIDWEST DREDGING CORP.; LIKINS-FOSTER HONOLULU CORP.; LOMITA HOMES INC.; and GEORGE A. McQUEEN in Opposition to the Petition of Walter S. Cooper for a Writ of Certiorari to review the judgments of the Supreme Court of the State of California which were made in the above entitled matters on March 20, 1969, is hereby respectfully presented.

OPINIONS BELOW

The Opinion of the California Supreme Court in SF Nos 22616 and 22617 is reported at 70 AC 669 and the Opinion in SF No 22619 is reported at 70 AC 687.

JURISDICTION

The jurisdictional requisites pursuant to 28 USC §1257 are adequately set forth in the petition.

QUESTIONS PRESENTED

In a haphazard and confused fashion, petitioner speaks of four purported "questions" presented for review [Pet 3-4]. Each "question" complains of an unspecified State law imposing a property ownership requirement on franchise as constituting: a denial of equal protection (questions I and II, Pet 3 and 4), a denial of due process (question III, Pet 4), and as a violation of rights under the United States Constitution without further specifica-

tion (question IV, Pet 4). Petitioner also apparently complains of a two year delay in enforcement of full voting rights (question II, Pet 4), the refusal of the State "to compel an accounting from a land developer", and various other contentions which defy translation.

In Petitioners' "Argument" (Pet 14-19), he sets forth *three* issues entitled as follows:

I Constitutionality of the Estero Act [Pet 14];

II Voting Rights of Petitioner [Pet 16];

III Right of Petitioner that the Land Developer Account to the Estero District [Pet 18].

Although each of these purported arguments partakes of the others and includes sundry contentions, best described as "accusations", we shall address our reply to these three entitled issues.

STATUTE INVOLVED

The Estero Act (Stats 1960, 1st Ex Sess 1960, ch 82, 459) is set forth in the Appendix to the Petition and the 1967 amendment thereto insofar as is applicable (Stats 1967, ch 1511, 2695, §§3, 5) is set forth in Appendix A herewith.

STATEMENT

Petitioner seeks review of three judgments, culminating in two opinions, of the California Supreme Court.

In the first opinion (70 AC 669), in consolidated appeals (*Cooper* v *Leslie Salt Co.*, SF 22616, and *Cooper* v

T. Jack Foster, SF 22617), the California Supreme Court affirmed judgments of the Superior Court of San Mateo County dismissing petitioner's complaints following the sustaining of demurrers thereto without leave to amend. Except to the extent discussed in respondents' Argument below, the facts and issues are adequately set forth in the opinion.

In the second opinion (70 AC 687), insofar as is relevant to this proceeding, the California Supreme Court in *Cooper v Estero Municipal Improvement District,* SF 22619, affirmed a judgment of dismissal of the Superior Court of San Mateo County following the sustaining of general and special demurrers to petitioner's second amended petition for mandate. Again, except to the extent discussed in respondents' Argument below, the facts and issues are adequately set forth in that opinion.

ARGUMENT

I. PETITIONER'S POINT I ENTITLED BY HIM "CONSTITUTIONALITY OF THE ESTERO ACT"

Petitioner baldly asserts here that the Estero Act is unconstitutional and that the instant holding of the California Supreme Court should not have enforced the provisions of California Code of Civil Procedure §803, which provides that an action in quo warranto brought by the attorney general of the State "is the only proper remedy" in cases attacking the legality of the existence of an agency of the state government. As the opinion below puts it [p675], under §803 the right to bring an action to

annul the existence of a governmental entity or a district of the State on the grounds that it was invalidly formed or that the statute under which it was formed was unconstitutional "is within the exclusive province of the Attorney General through a quo warranto action", which remedy "is not available to a taxpayer", and "the superior court would not have jurisdiction of an action challenging the lawful existence of a special district unless brought by the Attorney General."

As Petitioner concedes, the basis for jurisdiction of this Court is 28 USC §1257, which permits review

> "(3) By writ of certiorari . . . where the validity of a State statute is drawn in question on the ground of its being repugnant to the *Constitution, treaties or laws of the United States*. . . ." (Emphasis added)

Petitioner, however, ignores these requirements of §1257.

He has failed to inform this Court that his attack on the Estero Act in the California courts was on the ground that "the act itself is void in that it purports to create a corporation for municipal purposes by a special act of Legislature *in violation of article XI, section 6, of the California Constitution.*" (Emphasis added) [See the opinion below, p674.]

Since 1875, the rule of the Supreme Court has been that it does not hear questions of State law, *Murdock* v *City of Memphis*, 87 US 590, 22 LEd 429. The California Supreme Court unanimously denied petitioner's claim that the District was unconstitutionally created under the *State* constitution, because of petitioner's failure to follow the prescribed *State* procedure for the assertion of such a claim.

Although petitioner's argument as to "Constitutionality of the Estero Act" is saturated with allusions to "many constitutional questions" and violations of the "Magna Carta" [Pet 15, 16], his only reference to the United States Constitution is that "since petitioner and other residents must repay the debt incurred by their taxes in the Estero District, the petitioner and other residents of the Estero District are deprived of their property without due process of law by the Estero Act and by the refusal of the California Supreme Court to remedy the improper past and future operation of the Estero District" [Pet 16]. Petitioner cannot now fabricate a federal constitutional question out of the cloth of State law. His failure to raise any federal issue before the California Supreme Court concerning the formation of the District, upon hearing and rehearing is necessarily fatal to his present contentions.

Yakus v *United States* (1944) 321 US 414, 88 LEd 834.

II. PETITIONER'S POINT II ENTITLED BY HIM, "VOTING RIGHTS OF PETITIONER"

A. Introduction.

Petitioner urges that "the most obvious Constitutional defect of the Estero Act is the property qualification for the right to vote" [Pet 16]. In substance, petitioner contends that the Estero Act conflicts with the "one man, one vote" doctrine established by this Court in *Reynolds* v *Sims* (1964) 377 US 533, 12 LEd2 506, and as more recently expounded in *Avery* v *Midland County* (1968) 390 US 474, 20 LEd2 45.

Respondents submit that petitioner's contention is specious. The inapplicability and inappropriateness here of the "one man, one vote" doctrine is apparent upon examination of the origin, purpose, provisions, and development of the Estero Act.

B. The Estero Act.

The Estero Act Municipal Improvement District was organized in 1960 pursuant to a special act of the California Legislature (Cal Stats 1960, 1st Ex Sess 1960, ch 82, 459.) The purpose of the Act was to encourage and make feasible the reclamation of privately owned land by enabling the development of a residential, industrial, and commercial community [§75 et seq]. The implementation of this purpose prompted the enactment by the Legislature [§215]:

> "The purpose of this act is to form the Estero Municipal Improvement District in order that the area benefited may be provided with various municipal improvements. Special facts and circumstances, applicable to the general area within which the district lies and not generally, make the accomplishment of this purpose impossible under existing laws and therefore special legislation is necessary."

In formulating the structure, powers, and duration of the District, the Legislature considered characteristics peculiar to the area. The Legislature observed that the District consisted of undeveloped land belonging to a single owner [§1]. In 1960, the area comprised approximately 418 uninhabited acres [70 AC, 680]. The Act provided [§215(f)]:

> "The land in the district is not owned by residents. The owners are the ones primarily concerned with the district and the ones who will be supporting the district. The owners should therefore hold the voting power. Since no general law district with the necessary powers provides for voting by owners, special legislation is necessary."

Specifically, the Legislature established a governing board consisting of three directors [§26], two of whom would be owners, officers, or legal representatives of owners [§28], the third director being a "public member" appointed by the County Board of Supervisors [§28]. The Act implemented land ownership voting in the incipient District by providing for voting rights to be based on one vote for each dollar of assessed valuation of land [§64].

The Legislature recognized that the District required only *limited* governmental powers and expressly so provided in the Act [§215(d)]:

> "There is urgent need for the improvements which the district is empowered to construct under this act, but other municipal powers which could be exercised by a city *are not required*, and would result in more government than the area needs or wants." (Emphasis added)

However, as the Legislature observed, there existed no general law enabling the District to provide the facilities it required other than incorporation as a city; "therefore, the only way in which *the particular needs* of the area can be provided is by special act" [§215(e)]. (Emphasis added)

Hence, the Act empowered the District to perform minimal municipal functions to protect the life, health, and safety of residents moving in as the land was made ready. The District could construct street lighting facilities, provide for removal of garbage, for distribution of water, create parks, etc. [§§577, 578, 579a] The District was authorized to finance these improvements by special assessment [§93], general obligation bonds [§105], or revenue bonds [§135]. The District can provide a police department to protect and safeguard life and property [§79], but because it is not a county, city, town, or township, it has no general police powers [Cal Const Art XI, §11]. Moreover, the legislative powers of the District are strictly confined to "necessary and proper regulations, not in conflict with the laws of this State, for the removal of garbage and refuse and the supplying of sewage, light, water, storm water and fire and police protection service" [§97].

Unlike a municipality, the District is not authorized to enact criminal ordinances. Nor can it enact building ordinances, license businesses, or regulate traffic. Even as to reclamation, the District's powers are subordinated to the County Board of Supervisors, which determines the amount of reclamation necessary to protect land from tidal action, and designs the location of streets, curbs, drains, watermains, etc.

Succinctly, it is the County Board of Supervisors which retains the general powers of government. The District is only granted those powers necessary to enable it to accomplish the reclamation of land and to make the land habitable during the interim occupancy while the devel-

opment of the community by the District is still going forward.

The District is, by its very nature, temporary government of limited continuity. The Act expressly provides for annexation to a city, incorporation as a city, and for dissolution of the District [§§207-212]. The Legislature has carefully provided for a government responsive to the anticipated increasing residential character of the developing District. Since 1960 the District has grown from 418 uninhabited acres to some 2600 partially reclaimed acres with a population of some 8,000 persons on the reclaimed portion [70 AC, 680, 685]. In 1967 the Legislature amended the Act and provided for enlarging the Board of Directors by two members elected by popular vote of all residents to represent residents, also provided that in 1969 the public member theretofore appointed by the Board of Supervisors would be elected by popular vote; and provided that commencing in 1971 all five members of the governing board would be elected by popular vote of the residents [§§26 and 28, as amended by Cal Stats 1967, ch 1511, §3 and §5]. Since petitioner has failed to advise this Court of the said amendment, respondents attach a copy thereof hereto as Appendix A.

C. The "One Man, One Vote" Issue Is Not Present.

The California Supreme Court did not expressly decide petitioner's proffered "one man, one vote" issue because it found that the Legislature has already made appropriate provision for transfer of voting control from the owners of property to the residents. As previously noted, although ignored by petitioner, two of the five directors of the District are currently elected by residents. In the

election this year (1969) three directors will be subject to general election by all residents, and in 1971 the entire board of five directors will be so elected. It is upon this rational, deliberate, and sensible plan of the Legislature that the California Supreme Court found for respondents, stating [78 AC, 680]:

> "[T]he Legislature has recognized that as the character of the district gradually changes from uninhabited to that of an area with substantial numbers of resident registered voters it is appropriate that the voting power likewise gradually shift. Since the transfer of control from owners to resident voters will be accomplished by the close of 1971, no occasion is shown for interference by this court with the programming spelled out by the Legislature."

This Court in *Dusch* v *Davis* (1967) 387 US 112, 116 18 LEd2 656, 659, recognized where there is legitimate State interest, "an appreciable transition" will be permitted before the "one man, one vote" rule becomes compulsory. The California Legislature has here provided for such a transition in order to achieve the legitimate objective of developing a residential, commercial, and industrial community. Respondents submit that there is no basis for review by this Court under these circumstances.

D. The Estero Act Does Not Violate The "One Man, One Vote" Doctrine.

Contrary to petitioner's contention, the "one man, one vote" doctrine is not shibboleth invalidating State legislation by its mere utterance. The doctrine is an application of the Equal Protection Clause of the Fourteenth

Amendment. The Equal Protection Clause does *not* prohibit a State from discriminating between citizens. As this Court stated in *Avery* v *Midland County* (1967) 390 US 474, 484, 20 LEd2 45, 53:

> "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious."

Recently, the Court has further explored the propriety of voter qualifications adopted by a State:

> *Kramer* v *Union School District* (1969) ..... US ....., 37 LW 4530;
>
> *Cipriano* v *City of Houma* (1969) ..... US ....., 37 LW 4598.

In *Kramer,* New York law limited the right to vote in school districts to property owners or their spouses, lessees, or parents or guardians of children attending public school. In reviewing the statute, the Court emphasized that State laws affecting the right of franchise must be given "a close and exacting examination" [37 LW, 4531]. The question before the Court was "whether the exclusion [of a bachelor who lived with his parents] is necessary to promote a compelling State interest" [37 LW, 4532]. It was assumed arguendo that New York could limit the franchise in the school district elections to those "primarily interested in school affairs". Even so, said the Court, "the classifications must be tailored so that the exclusion of appellant and members of his class is necessary to achieve the articulated State goal" [37 LW, 4533]. Upon application of these standards to the statute, it was found that persons who had a distinct and direct

interest in the elections were excluded. In the absence of justification, this failure to sufficiently limit the franchise to those "primarily interested" was fatal to the statute.

In *Cipriano,* the Court examined a Louisiana law which excluded nonproperty owners from voting on public utility revenue bond issues. As in *Kramer,* it was assumed arguendo that Louisiana could limit the franchise to those "primarily interested". However, the Court again found that the classification did not meet the "exacting standard of precision" required of statutes selectively distributing the franchise [37 LW, 4599]. Because the benefits and burdens of the bond issue affected both property owners and nonproperty owners equally, the classification was constitutionally defective.

In the instant case, the Estero Act meets the most exacting constitutional requirements.

We start with the premise that the Act fosters a legitimate public, and therefore State, interest of encouraging the reclamation of theretofore uninhabitable private land. The means chosen by the Legislature to develop a viable community was development by a public district with incidental governmental powers granted only to the extent necessary during the period while the land was being made habitable, so that the projected community could become a reality [See 70 AC, 677].

Special function districts are very common in California. There are more than 100 such districts in California dealing with water problems alone. For example, the California Water District Law created a type of governmental entity for the distribution of water empowered to

exercise eminent domain [Water Code §35625], make rules governing distribution of water [Water Code §35423] and enforce such rules under misdemeanor penalties [Water Code §35424]. The Protection District Act of 1907 (stats 1907, ch 25, 16) provides for districts to protect land from damage by unnavigable bodies of water [§1], and permits the issuance of bonds [§§31-38], taxation [§§41-43], special assessments [§53], exercise of eminent domain [§15], and the power to award mineral and gas leases [§§13.5-13.7]. The Drainage District Act of 1903 (stats 1903, ch 238, 291) creates a governmental entity for the drainage of agricultural lands other than swamp and overflowed lands [§1], with powers analogous to the aforementioned acts.

To administer the Estero District, the Legislature chose a three-man board of directors. Voting rights were accorded only to property owners on the basis of one vote per one dollar of assessed valuation of real property. This was not an "arbitrary" requirement, but one dictated by the existing circumstances and aims.

Significantly, the California Legislature has chosen property ownership as a basis for voting rights in many other special function districts because property-ownership voting is similarly a practical necessity for the functioning of those districts. [For example, California Water District Law, Water Code §35003; Reclamation District Law, Water Code §50016; Drainage District Act of 1903 (stats 1903, ch 238, 291, §7, as amended stats 1941, ch 335, 1575); Protection District Act of 1880 (stats 1880, ch 63, 55, §3, as amended stats 1889, ch 250, 366; stats 1929, ch 587, 990; stats 1957, ch 406, 1256; stats 1966, 1st Ex

Sess ch 16, §27); Sacramento River West Side Levee District (stats 1915, ch 361, 520, §3, as amended stats 1917, ch 673, 1212).]

Application of a "one man, one vote" doctrine would not only be inappropriate to such special function districts, but would be totally destructive of the legitimate State objectives intended to be accomplished. In the Estero District, no investor would procure, reclaim, and develop uninhabited land if upon the sale or lease of one developed parcel he lost control of the project. The absurdity of such a situation is apparent upon the facts of the instant case. Again, it is worth emphasizing that this was the consideration paramount in the Legislature's selection of the basis for voting [§215(f)]:

> "The land in the district is not owned by the residents. The owners are the ones primarily concerned with the district and the ones who will be supporting the district. The owners should therefore hold the voting power. . . ."

It is respectfully submitted that the Estero Act's voting classifications do not conflict with any decision of this Court. The Act survives the "close and exacting examination" demanded by *Kramer*. The District fosters a legitimate State interest. The property ownership requirement is not only necessary to accomplish that objective under the standards of *Kramer* and *Cipriano*, but is indispensable to the intended development of the community.

More significantly, and unlike *Kramer* and *Cipriano*, residents are not precluded from participating in election of directors. Their participation is progressively greater

as development nears completion, and complete voting control in them is already provided for by law. At present they elect two directors, the same number as the property owners; the fifth director being a "public member" appointed by the Board of Supervisors. This balance of voting power, and its progressive, continuous weighting in favor of the residents, is necessitated by the incipient and uncompleted development of the community. At present, only 1400 of the 2600 acres in the District have been developed; the current population of 8,000 persons is far short of the 35,000 intended to be accommodated. With the community at less than 25 percent of its intended population, the residents already have control over the election of directors equal to that of the property owners. By the end of 1969, the residents will elect a majority of the directors, and by the end of 1971 the residents will elect the entire board. This situation is vastly different from that in *Kramer* and *Cipriano* where the disenfranchised persons were totally precluded from voting in the elections.

The Estero Act does not deprive residents of the right to vote. The situation presented to this Court by the Estero Act is one of orderly and reasonable transition, from uninhabited raw land to the development of a complete community. The situation of the voting provisions must be viewed in that context, and in view of the requirements necessary to the achieving of a legitimate State objective. In *Dusch* v *Davis, supra,* the Court wisely recognized that "an appreciable transition period" may be appropriate before the "one man, one vote" rule becomes compulsory.

Respondents submit, as the California Supreme Court found, that "no occasion is shown for interference by this Court with the programming spelled out by the Legislature" [70 AC, 680].

III. PETITIONER'S POINT III ENTITLED BY HIM "RIGHT OF PETITIONER THAT THE LAND DEVELOPER ACCOUNT TO THE ESTERO DISTRICT"

Petitioner complains of the California Supreme Court's unanimous refusal to "compel" respondent T. Jack Foster & Sons to account pursuant to California Civil Code §2235. The California Supreme Court stated five reasons why petitioner had not stated sufficient facts to constitute a cause of action in this regard: (1) Mandamus is not the proper procedure to compel an accounting [70 AC, 692]; (2) Petitioner did not allege he was "suing on behalf of the district" [*ibid*]; (3) Petitioner did not allege that he demanded "the district to request an accounting from the Fosters . . . and that such demand was refused" [*ibid*]; (4) Petitioner himself placed before the California Supreme Court a document indicating that such accounting would be had by agreement of all concerned parties [70 AC, 692-693]; and (5) The audit in fact was completed in November 1967 and exists as a public record of the District [70 AC, 693, fn[3]].

Despite the clear lack of any federal question in this area, petitioner with incredible naivete blandly asserts in his petition here for the first time in these entire proceedings that he was denied "due process of law" by the refusal to compel an accounting [Pet 19].

Succinctly, the California Supreme Court held that petitioner had not stated a cause of action to compel an accounting by these respondents on the asserted grounds of fraud, resting its judgment on the aforesaid five separate procedural and substantive defects and omissions in petitioner's pleading. Even if it be granted arguendo the California Supreme Court was wrong as to this, there still exists no federal ground for review by this Court.

Murdock v *City of Memphis, supra;*
Yakus v *United States, supra.*

CONCLUSION

For the aforementioned reasons the petition for certiorari should be denied.

San Francisco
10 July 1969

Respectfully submitted,
BERT W. LEVIT
Attorney for T. Jack Foster; T. Jack Foster & Sons; T. Jack Foster, Jr.; T. R. Foster; Richard H. Foster; Foster D. Corp.; Foster T. Corp.; Foster J. Corp.; Foster B. Corp.; Midwest Dredging Corp.; Likins-Foster Honolulu Corp.; Lomita Homes Inc.; George A. McQueen, Respondents

LONG & LEVIT
Of Counsel

(Appendix A Follows)

Appendix A

1967 Regular Session

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

CHAPTER 1511

(Assembly Bill No. 984)

An act to amend Sections 20, 21, 22, 26, 28, 29, 55, 57, 58, 59, 61, 63, 64, 65, 68, 106, 161, and 162 of, to add Article 10.5 (commencing with Section 167.1) to, and to repeal Sections 27 and 60 of, the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), and to amend Section 100 of Chapter 29 of the Statutes of 1967, relating to the Estero Municipal Improvement District, and declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

* * *

SEC. 3. Section 26 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 26. The board is the governing body of the district and, commencing with the last Friday in December, 1967, shall consist of five (5) members, one of whom shall be president. The officers of the district are the five members of the board and a secretary. The district may have a finance officer, and other officers as the board may from time to time create.

* * *

SEC. 5. Section 28 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 28. Except as otherwise provided in this section, two directors shall be owners or officers or legal representatives of owners, two shall be registered voters resident within the district, and one shall be a public member designated and appointed by the county board of supervisors. The term of the public member commencing in March, 1968, shall expire on the last Friday of December, 1969, and succeeding terms shall thereafter be filled by nomination and election or appointment pursuant to the Uniform District Election Law by registered voters resident within the district.

Landowner-directors shall be nominated and shall be elected or appointed pursuant to Article 4 (commencing with Section 55) of this act at elections to be held on the fourth Tuesday in March of 1968 and 1970. The terms of the directors elected or appointed at such times shall run until the last Friday in December, 1971. Thereafter, said offices shall be filled by nomination and election or appointment pursuant to the Uniform District Election Law by registered voters resident within the district.

A general district election shall be held on the first Tuesday after the first Monday in November, 1967, pursuant to the Uniform District Election Law for the purpose of filling two offices of director. Such offices shall be filled by and voted upon by registered voters resident within the district and qualified to vote on said date. The two candidates receiving the highest number of votes shall be deemed elected, the one with the highest votes

to serve for four years and the one with the next highest number of votes to serve for two years. All subsequent terms of office filled pursuant to the Uniform District Election Law shall be for four years.

Commencing with the election to be held on the first Tuesday after the first Monday in November, 1971, no person shall be qualified to be elected or appointed to the office of director nor to vote at any district election who is not a registered voter resident within the district.

* * *